

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SAN JOSE

C O N F I D E N T I A L STATE 036284

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E.O. 11652: GDS

TAGS:EINV, CS

SUBJECT: ROLE OF OPIC IN INVESTMENT DISPUTE SETTLEMENT

REF: SAN JOSE 474

1. OPIC'S FUNDAMENTAL PURPOSE, AS DEFINED IN SECTION 231 OF THE FOREIGN ASSISTANCE ACT OF 1969, WHICH CREATED OPIC, IS "TO MOBILIZE AND FACILITATE THE PARTICIPATION OF U.S. PRIVATE CAPITAL AND SKILLS IN THE ECONOMIC AND SOCIAL PROGRESS OF LESS DEVELOPED FRIENDLY COUNTRIES AND AREAS, THEREBY COMPLEMENTING THE DEVELOPMENT ASSISTANCE OBJECTIVES OF THE UNITED STATES..." FURTHER, OPIC IS REQUIRED BY LAW TO "UNDERTAKE TO CONDUCT ITS INSURANCE OPERATIONS WITH DUE REGARD TO PRINCIPLES OF RISK MANAGEMENT;" I.E., IN ORDER TO SPREAD RISK AND EARN INCOME, OPIC MAY INSURE INVESTMENTS THAT PROBABLY WOULD GO FORWARD WITHOUT OPIC INSURANCE. WE BELIEVE THAT INSURANCE SHOULD BE BASED ON THESE AND OTHER ELEMENTS OF OPIC'S CONGRESSIONAL MANDATE AND ON THE MERITS OF INVESTMENT PROJECTS. OPIC'S ROLE IN SETTLEMENT OF ANY INVESTMENT DISPUTE THAT MAY ARISE, HOWEVER BENEFICIAL OR

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DEBATABLE IT MAY HAVE BEEN IN PAST CASES, IS NOT A FACTOR

THAT SHOULD ENTER INTO DECISIONS ON ISSUING NEW INSURANCE.

2. THE ARGUMENT THAT USG PROTECTION RESPONSIBILITIES WILL ARISE IN ANY CASE APPEARS TO IGNORE THE FACT THAT POLITICAL RISK INSURANCE IS A U.S. GOVERNMENT INCENTIVE TO FACILITATE INVESTMENT IN FRIENDLY LDCS; MOREOVER, IT IS AN INCENTIVE THAT CAN BE OFFERED SELECTIVELY TO QUALIFIED INVESTORS. GRANTING SUCH A DISCRETIONARY INCENTIVE CAN ONLY BE INTERPRETED AS INDICATING USG APPROVAL OF THE PROJECT IN QUESTION. THEREFORE, INSURANCE SHOULD NOT BE GRANTED WHEN FOREIGN POLICY CONSIDERATIONS ARE ADVERSE TO THE PROJECT. MAW

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